IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7066 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGALBHAI B PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

MR DN PATEL, ASST. GOVT. PLEADER for Respondent No. 2

MR BC DAVE for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 05/05/2000

ORAL JUDGEMENT

1. Mr. Patel, learned advocate appearing for the petitioner has raised several contentions, but for the purpose of disposal of this petition, the following

question is only required to be considered:

"Whether initiation of proceedings under section 84.C of the Tenancy Act after lapse of considerable time would amount to arbitrary exercise of power and thus bar the exercise of power under section 84 C of the Tenancy Act?".

2. This Court is not inclined to consider the other aspects as in view of the settled legal position with regard to delay, this matter is required to be disposed of.

3. Transfer of Agricultural land bearing Survey No.48 admeasuring 1 Acre 20 Gunthas situated in the sum of village Ranasan, Taluka Vijapur, Dist Mehsana is the subject matter of the present petition. The petitioner, claiming to be agriculturist was cultivating the agricultural land and since the land was not enough for maintenance of his family, he purchased another land bearing survey No. 361 admeasuring 3 Acres 25 Gunthas situated in the sim of village Fatehwadi, Taluka Daskroi, Dist. Ahmedabad by a registered sale deed dated 19.5.1978.

4. The Mamlatdar and Agricultural Land Tribunal, Daskroi by invoking section 84.C of the Bombay Tenancy and Agricultural Land Act 1948 (hereinafter referred to as the Act) initiated proceedings suo motu and held that the petitioner was not entitled to purchase the said land situated at village Fatehwadi. It is argued before this Court that the Mamlatdar and Agricultural Land Tribunal, without considering the contentions raised by the petitioner, passed an order on 17.1.1983 holding that the petitioner is not entitled to purchase the land in question and directed vesting of the land in favour of the State.

5. Being aggrieved by the said order passed by Mamlatdar and Agricultural Land Tribunal, the petitioner preferred Appeal No. 109 of 1983 before the Deputy collector which was dismissed by order dated 24.2.1986, confirming the order passed by the Mamlatdar and Agricultural Land Tribunal. The Deputy Collector also ordered forfeiture of the amount of Rs.12,000/- received by Respondent No.3, being the amount of consideration in respect of the said land.

6. In view of the above order passed by the Deputy Collector, the petitioner herein approached Gujarat Revenue Tribunal by preferring Revision Application No.

383 of 1986. Respondent No.3 herein also preferred Revision Application No. 442 of 1986 before the Tribunal being aggrieved by the order passed by the Deputy Collector. The Tribunal by a common judgment, dismissed the Revision Application on 28.6.1988. It appears that the order was passed without hearing the respondent No.3. The matter was remanded. Further, on remand, the order was confirmed by the lower authority. It is against the order passed by the Tribunal this petition is preferred.

7. It is required to be noted that in the instant case, the sale deed was executed on 19.5.1978 and it was registered with the concerned authorities. It is submitted that section 84.C could have been invoked by the Mamlatdar within a reasonable period, and it is not open for the Mamlatdar to exercise the powers suo motu at any time. Sub-clause (1) of section 84.C of the Tenancy Act is relevant for the purchase, which reads as under:-

> "84.C(1). Where in respect of the transfer or acquisition of any land made on or after the commencement of the Amending Act, 1955, the Mamlatdar suo motu or on the application of any person interested in such land has reason to believe that such transfer or acquisition is or becomes invalid under any of the provisions of this Act, the Mamlatdar shall issue a notice and hold an inquiry as provided for in section 84B and decide whether the transfer or acquisition is or is not invalid."

8. Thus, the Mamlatdar can issue notice and hold inquiry as provided for in section 84.B of the Act. No period of limitation is prescribed in section 84.C or there is no other provision for limitation within which the powers can be exercised.

9. Mr. Patel drew the attention of the Court to a decision of the Apex Court in the case of MOHAMAD KAVI MOHAMAD AMIN vs. RATMABAI IBRAHIM reported in (1997) 6 SCC 71. In that case two sale deeds were executed on 11.12.1972 and 28.12.1972 whereby the appellant purchased land admeasuring 3 Acres 06 Gunthas and 3 Acres and 18 Gunthas. The record of rights reveal that on 14.3.1973 there was mutation entry. In September 1976, the Mamlatdar of the area concerned initiated a suo motu inquiry under section 84.C of the Act. In paragraph 2 the Court has considered the submission that the transfer took place as early as in the year 1972 and suo motu inquiry was started in by the Mamlatdar in September 1973. The Apex Court pointed out that if the sale deeds

are declared to be invalid, the appellant is likely to suffer irreparable injury because he has made investment after the aforesaid lands are purchased. The Apex Court considered the decision in case of STATE OF GUJARAT V/S. PATIL RAGHAV NATHA (PATIL sic, PATEL) reported in (1969) 2 SCC 187, and observed as under:

"In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B. Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat V. Jethamal Bhagwandas Shah disposed of on 1.3.1990, where in connection with Section 84.C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions, in the case of State of Gujarat vs. Patil Raghav Natha and in the case of Ram Chand v. Union of India has impressed that where no time limit is prescribed for exercise of a power under a statute, it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time.

10. In view of what is stated hereinabove, without discussing the other aspects, the matter is required to be allowed only on the ground that the authority exercising powers under sec. 84.C of the Act has not exercised the powers within reasonable time. In view of the settled position by several judgments, this petition is allowed. Rule is made absolute. No order as to costs. Impugned orders are quashed.

csm/. (B.C. PATEL, J.)